REMARKS

Claim Objections

Claims 4, 22, and 23 have been amended as suggested in the Office Action.

Section 112 Rejections

Claims 1, 12 and 17 were rejected under 35 U.S.C. § 112, ¶ 1 as failing to comply with the written description requirement. Applicant does not agree with the basis for the rejection, but in order to expedite prosecution, has amended claims 1, 12 and 17 to remove the phrase "wherein no payment is owed between the option grantor and the business entity under the contract when the strip value is greater than the predetermined value."

Section 103 Rejections

The pending claims were rejected under § 103 as being obvious based on Woodley (Pub. No. 2002/0178111) and Dines (Patent No. 6,950,806). Applicant traverses the rejections as follows.

Independent claim 1 recites the step of "comparing … the strip value to a ***predetermined value specified in the contract***." Claim 1 states that the strip value is calculated "based on an aggregation of the calculated option values." According to claim 1, the option values are calculated based on:

> a difference between a first value and a second value that are evaluated at one of the plurality of time segments, wherein the first value is based on price data for the second commodity associated with the time segment, and the second value is based on price data for the first commodity associated with the time segment.

Claim 1 further clarifies that the comparison of the strip value to the "predetermined value specified in the contract" determines whether a payment is made from the option grantor: if the strip value is less that the predetermined value specified in the contract, a payment is made, with the payment amount being based on the difference between the strip value and the predetermined value specified in the contract. Thus, the strip value is compared to a

predetermined value specified in the contract to determine whether a payment is owed under the contract.

In the prior art Woodley reference, unlike claim 1, determination of whether a payment is made is ***not*** based on the difference between a strip value and a predetermined value specified in a contract. Rather, in Woodley, the financial institution pays the client when tracking portfolio cash flows are less than benchmark portfolio cash flows. *See* Woodley at ¶ [0055]. The tracking portfolio cash flows "are a sequence of values over time that represent the efficacy by which the hedging portfolio hedges the model portfolio." *Id.* at ¶ [0053]. The benchmark portfolio cash flows are "a series of cash flows that represents the client's desired financial objective in operating the client's portfolio." *Id.* at ¶ [0055]. The example disclosed in Woodley is that the client's financial objective "may be to achieve a set stream of cash flows from the plant despite the high variability and unpredictability of gas and electric prices." *Id.* Woodley does not disclose that the benchmark cash flows are predefined values in a contract. Rather, the client provides the benchmark cash flows to the financial institution. *Id.* Thus, in Woodley, a payment is made by the financial institution when the difference between the benchmark portfolio cash flows and the tracking portfolio cash flows is positive. Consequently, Woodley does not compare a strip value, that is determined based on an aggregation of option values, to a value specified in the contract to determine whether a payment is required.

Moreover, this is an unobvious difference. In the method of claim 1, the business entity uses the contract to hedge increases in the price of the first commodity relative to the second commodity. On the other hand, in the Woodley reference, the client already has a series of hedging transactions. *See id.* at ¶ [0050]. Thus, in the Woodley reference, the contract is effectively insurance against the client being improperly hedged through its hedging transactions. In contrast, in claim 1, the contract itself is the hedge on the price fluctuations of the commodities.

Dines also does not disclose determining whether a payment is made based on the difference between the strip value and the predetermined value specified in the contract.

For at least these reasons, applicant submits that claim 1 is not obvious in view of the cited references. By virtue of their dependency upon claim 1, applicants submit that claims 2-8

and 10-11 are also nonobvious. In addition, because independent claims 12 and 17 are substantively similar to amended claim 1, applicants submits that claims 12 and 17, as well as their respective dependent claims, are not obvious.

CONCLUSION

Applicant respectfully submits that all of the claims presented in the present application are in condition for allowance. Applicant's present amendment should not in any way be taken as acquiescence to any of the specific assertions, statements, etc., presented in the Office Action not explicitly addressed herein. Applicant reserves the right to address specifically all such assertions and statements in subsequent responses. Applicant also reserves the right to seek claims of a broader or different scope in a continuation application.

Applicant does not otherwise concede the correctness of the Office Action's rejection with respect to any of the dependent claims. Accordingly, Applicant reserves the right to make additional arguments as may be necessary to distinguish further the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

Applicant has made a diligent effort to properly respond to the Office Action and believe that the claims are in condition for allowance. If the Examiner has any remaining concerns, the Examiner is invited to contact the undersigned at the telephone number set forth below so that such concerns may be expeditiously addressed.

Respectfully submitted,

Mark Knedeisen

Date: 6/22/2010

Mark G. Knedeisen
Reg. No. 42,747

K&L GATES LLP
K&L Gates Center
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222

Ph. (412) 355-6342
Fax (412) 355-6501
Email: mark.knedeisen@klgates.com